D.B. CIVIL SPECIAL APPEAL NO.496/2005
(The State of Rajasthan and anr. V/s Bhanwar Singh)

3.1.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P.VYAS

Mr.L.R. Upadhyaya for the petitioner/s.

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Having heard the learned counsel for the appellant we are satisfied that no case for interference is made out. It is the case in which the officers have clearly sacrificed substance on the format. The admitted position is that the petitioner – respondent was highest bidder for the contract for collection of royalty under the Miner Mineral Concession Rules framed by the State. As per the substantive requirement of deposit of security amount, the respondent – petitioner deposited a sum of Rs.2,50,000/- with Madhav Sahkari Bank which was licensed to do banking business by the Reserve Bank of India and FDRs were duly deposited with the Mining Department. On the apprehension about the acceptance of the FDRs that FDRs were not from the natinalised bank, but were from the Cooperative Bank, the petitioner without getting information realising that this objection might be there, obtained FDRs. from State Bank of Bikaner and Jaipur, a nationalised bank also on 18.11.2003. Thereafter

he submitted a representation narrating all these facts for accepting his tender. However, the appellant not only cancelled the tender, but forfeited the amount of security deposited by way of FDR.

Aggrieved with the forfeiture of security deposit submitted by the petitioner, the respondent preferred the writ petition.

The learned Single Judge finding that the forfeiture was wholly unwarranted, over ruled the preliminary objection about the availability of alternative remedy by way of departmental revision and allowed the writ petition.

We are of the opinion that in the first place, the appellants were in error in considering the condition of FDR from the nationalised bank as a mandatory requirement, touching the very validity of offer. Such a condition of securing FDR from a particular bank can at best be treated as directory and not mandatory condition and could always be cured in the circumstances like in the present case. Substance of the matter was that security of requisite amount has been offered by depositing cash with the Cooperative Bank and those FDRs were placed with the concerned authority. At best, it can be a case of

irregularity needing the highest bidder to furnish a proper security in place of security which has been deposited with the authority concerned. It is not the case of the appellant either that the respondent has acted malafide or in fact the bidder had not parted with the requisite amount to secure FDRs from the Bank concenred. If instead of furnishing FDR from natinalised bank, the applicant would have offered like amount in cash as security deposit, neither the bid could have been cancelled nor such cash could have been forfeited. In such event also, at best the bidder could have been asked to procure FDR from the nationalised Bank by depositing the same with the Bank concerned. The present case also could not be treated differently.

In that view of the matter, we are of the opinion that no interference is called for in the order of learned Single Judge allowing the writ petition and setting aside the order of forfeiture.

The appeal, therefore, fails and is hereby dismissed.

(R.P.VYAS)J (RAJESH BALIA)J.

SS/-